



Final Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18VAC50-22
Regulation title	Board for Contractors Regulations
Action title	Amendment to add pre-license education
Date this document prepared	November 2, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

The Board for Contractors (the Board) seeks to amend its current regulations to implement new pre-license education requirements as mandated by Chapters 454 and 475 of the Acts of the General Assembly, approved March 31, 2006 and promulgated as emergency regulations by the board on August 21, 2006.

These final regulations amend sections of the administrative code regarding the entry requirements for Class A, B and C contractors, adding the requirement of successful completion of a Board approved pre-license education course for the Designated Employee or a member of Responsible Management. A new section (Part VI) is added to the regulations to provide eligibility and reporting criteria for education providers and education courses.

There were no changes to the final regulation from the proposed regulation.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 23, 2007, the Board for Contractors voted to adopt these amendments to 18VAC50-22 as final.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

As provided in Chapters 454 and 475 of the 2006 Acts of the General Assembly, § 54.1-1102 of the Code of Virginia was amended to require that the Board promulgate regulations adding pre-license education to the eligibility criteria for licensure as a contractor.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is determined at the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

In order to protect the public from inexperienced, irresponsible or incompetent contractors, the Commonwealth initiated the licensing of those performing work in the construction industry in 1938. The purpose of amending these regulations is to add a requirement that a member of Responsible Management or the Designated Employee of an applicant successfully complete a business education course as a prerequisite for licensure as a contractor. The implementation of this requirement and the amendment to the regulations should result in a decrease of violations of the standards of conduct set forth in the Board's Regulations.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Since the purpose of this action is to promulgate regulations mandating the successful completion of a business class, approved by the Board for Contractors, as a prerequisite for licensure as a contractor in Virginia, all substantive changes involve the identification of the new requirement and the logistical implementation of the approval process for education providers. The entry portion of the regulations (Part II) has been amended in order to add the prelicense education requirement to the applicable sections for each of the three license classes.

Prior to the 2006 amendment to Title 54.1 of the Code of Virginia, there were no specific education requirements for businesses applying for contractor licenses. The addition of a pre-license education requirement to the current eligibility criteria necessitates a new portion of the regulations in order to lay the logistical groundwork for the approval of courses, registration and reporting of students and other requirements.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

1) Since January 2003, the Board has adjudicated nearly 2000 disciplinary cases, with over 1900 of those cases involving disciplinary action against businesses holding a contractor license. As a result of those cases the Board has levied \$4.2 million in fines, revoked 618 licenses, sent 1059 contractors to remedial education classes and reimbursed consumers over \$3 million from the Contractor Transaction Recovery Fund. The citizens filing complaints against and being harmed by these contractors were subject to deliberate fraud in only a small percentage of the cases, while over three-quarters of the sanctions levied by the Board involve violations that could have been prevented if the licensees had been provided with the knowledge of some basic business tools and their relationship to the Board for Contractors Regulations. The implementation of this requirement will likely result in a decrease in the number of complaints received against contractors who have been through the training, a significant advantage to the public, in that less consumers will be subject to financial harm.

2) The workload of the Board for Contractors continues to increase at a rapid pace. Since FY 2003 the board has increased the number of meetings held per year by 50%, to once a month. The increase in the workload has been mirrored by an increase in expenses, a result of more investigations, more hearings and a larger compliance caseload. Even a small decrease in the number of cases processed by the board or DPOR could result in a decrease in expenditures.

3) An increase in the knowledge base of the regulated community may result in more informative business decisions, which could lead to more successful businesses. Syllabuses of

courses approved by the board after the promulgation of emergency regulations include a module on permitting and inspection requirements of local government, an area of concern reflected in disciplinary data. Educating contractors in the statewide permitting and inspection requirements set forth in the Virginia Uniform Statewide Building Code should result in a greater level of compliance with local requirements, a pleasant “side effect” for local governments.

The promulgation of these regulations poses no disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the text of the proposed regulation since its publication.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Lewis Harden (via Town Hall)	Suggest that applicants with degrees in areas such as construction management, architecture, engineering, business and others be exempt from the pre-license education course.	The course curriculum approved by the Board for Contractors is based on the statutes and regulations and their relationship with how a contracting business functions with a great deal of emphasis placed on those regulations that have resulted in the most complaints and adjudicated cases against licensees. While a degree in construction and business related areas would certainly be helpful to an applicant, their education would not likely include those regulations of the Board that result in the most damage to consumers and other businesses in the Commonwealth.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 50-22-40		Lists requirements for entry as a Class C contractor.	Amended to include paragraph (F) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
18 VAC 50-22-50		Lists requirements for entry as a Class B contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
18 VAC 50-22-60		Lists requirements for entry as a Class A contractor.	Amended to include paragraph (H) which adds the requirement of pre-license education. Required by Chapters 454 and 475 of the Acts of the General Assembly.
	18 VAC 50-22-300		Adds new Part VI (Pre-license Education) to the regulations. This first section to the new part provides that all pre-license education courses must be approved by the Board for Contractors (The Board), be at least eight hours long and cover business principles addressed in the standards of conduct or other sections of the regulations dealing with continued licensing. The "Prohibited Acts" set forth in 18 VAC 50-22-260.B of the regulations contain a number of "business" related issues that are common violations in disciplinary cases brought before the Board. Since 2003, more than 66% of the regulatory violations adjudicated by the board include items that could be easily identified in pre-license education courses. Violations for failure to include required information in a contract, essential for both regulant and consumer protection, occur in nearly 50% of all cases. Other violations involve record keeping, properly amending contracts, use of unlicensed subcontractors, the misapplication of funds paid by a consumer, failure to obtain building permits and other related activities. A reduction of 25% of those violations, a reasonable expectation from the implementation of pre-license education, would reduce the Board's disciplinary caseload by 100 cases per year. That would result in a reduction of one to two board meetings per year with a direct cost savings of about \$5000. Additionally, Virginia consumers would benefit from experiencing business transactions that adhered to the Board's standards.
	18 VAC 50-22-310		Identifies the information that must be included in an application for approval sent to the Board for Contractor from a prospective

			<p>course provider. This information is primarily demographic and used to maintain the approved education provider database. Other information is gathered to set a record keeping baseline to ensure that the course is presented as approved.</p> <p>Requirements are also established for record keeping by the approved provider. This is essential to ensure proper documentation and validation of individuals who have completed the course.</p>
	18 VAC 50-22-320		<p>Sets forth the requirement that providers must notify the Board of course completion in an electronic format within a mandated period of time. Electronic reporting is a well established method of transmittal used by the Board for examination results and by other regulatory boards for the reporting of pre-license and continuing education.</p> <p>The seven day time requirement is also used by other regulatory boards. It is essential to establish a time requirement to ensure that information is received in a timely basis. Failure to receive information in a timely manner will result in a delay in the application review time, which could harm the applicant.</p>
	18 VAC 50-22-330		<p>Establishes the requirement that all course providers must ensure that certificates of approval be available at the location a course is taught. This provides another layer of protection for the licensee who, in this particular instance is a consumer, to ensure that the course he is about to take has actually been approved by the Board.</p>
	18 VAC 50-22-340		<p>Requires that any changes to the information provided to the Board that resulted in the approval of the course must be reported to the Board within a specified period of time.</p>
	18 VAC 50-22-350		<p>Establishes that the Board may deny an application for approval of a provider or withdraw approval of an existing provider for cause. These causes include instances where a provider advertises fraudulently, provides false information or offers a course that no longer meets the standards set by the Board.</p>

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while

minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

In their development of this proposed regulatory package, the Board for Contractors reviewed regulations and procedures used by other regulatory boards that require pre-license education. Information obtained during those reviews was instrumental in the development of regulations that would be the least stringent from a standpoint of compliance and reporting. Since the promulgation of the emergency regulations, the Board has worked with education providers to ensure that attendance information is provided quickly, accurately and electronically in order to minimize any reporting requirements from applicants for licensure. The Board has carefully considered the issue of the burden to the providers of meeting reporting deadlines against the burden to applicants that are not able to work as contractors until their licenses have been issued and have established reporting requirements that are fair to both parties.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these proposed regulations will have any affect on the institution of the family or family stability in Virginia.